IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5267 OF 2005

B.P.L.Mobile Communication Ltd. ...Applicant

Versus

The State of Maharashtra and Ors. ...Respondents

Shri J.P.Shah i/by Shri A.S.Khan & Associates for the Applicant.
Shri A.S.Shitole, A.P.P for the State.

CORAM : A. S. OKA, J.

DATE : DECEMBER 21, 2006.

P.C.:

1. Notice for final disposal at admission stage was ordered to be issued by this court by order dated 22nd November, 2006. The affidavit of service filed on behalf of the Applicant states that notice is duly served in terms of order passed by this court and acknowledgment signed by the second Respondent is annexed to the Affidavit.

2. The complaint filed by the Applicant under section 138 of the Negotiable Instruments Act, 1881 has been dismissed in exercise of power under section 256 of the Code of Criminal Procedure, 1973.

3. The learned Advocate for the Applicant has placed on record a xerox copy of the roznama. The perusal of the roznama shows that except on 14th June, 2005, the representative of the Applicant and the Advocate for the Applicant have not remained absent. On one occasion the case was adjourned as the concerned Judge was on leave.

4. Considering these facts, in my view, the learned Trial Judge ought to have granted one more opportunity to the Applicant to prosecute the complaint and the complaint could not have been dismissed as the Applicant was diligently prosecuting the same.

5. Hence, I pass the following order:

(i) The impugned order dated 14th June, 2005 is quashed and set aside and the complaint bearing Case No.197/SS/05 is restored to the file of the Trial Court.

(ii) The Trial Court will issue notice of the date fixed in the complaint to both the parties.

(iii) Writ be sent immediately.

JUDGE